

REMARKS

Upon entry of the present amendments, claims 6-11 constitute the pending claims in the present application. Claims 1-5 are cancelled. Claim 11 is newly added. Claims 1-10 are subject to restriction and/or election.

1. Amendments and New Claims

Applicants have amended claims 6 and 10 to more particularly define the claimed invention. Support for the amendments to claim 6 can be found, for example, on p. 6, lines 1-3 of the specification as originally filed. Support for the amendments to claim 10 can be found, for example, on p. 9, lines 5-9, in view of the disclosure on p. 6, lines 1-3 of the specification as originally filed. Applicants also have added new claim 11, which corresponds to original claim 10. No new matter is added by the above amendments or newly added claim 11. Applicants reserve the right to file one or more continuing applications directed to the claims as unamended.

2. Restriction Requirement - Group and Species Election

The Office has required restriction between the following three groups: Group I, claims 1-5, drawn to a composition; Group II, claims 1-5, drawn to a method of preparing a composition; and Group III, claims 1-10, drawn to a method of treatment.

Applicants hereby elect Group III, claims 1-10, **without** traverse. Applicants have also cancelled claims 1-5 of Groups I and II. Applicants reserve the right to file one or more divisional applications directed to the subject matter of claims 1-5 of Groups I and II in accordance with 37 CFR § 1.78. Claims 6-10 as well as newly added claim 11 fall within elected Group III.

Lastly, the Office has required that Applicants elect a single species from the disclosed hydroximic acid halide derivatives in claims 2-4 and a single species from the disclosed neurodegenerative disorders listed on p. 9 of the instant specification. Applicants hereby elect (+)-R-N-[2-hydroxy-3-(1-piperidinyl)-propoxy]-pyridine-1-oxide-3-carboximidoyl chloride citrate and amyotrophic lateral sclerosis **with traverse**. Claims 6-11 read on the single elected species.

These species elections are made with traverse because the Office's requirement for species election is improper. First, the Office asserts that the species listed in claims 2-4 (which are also the same species in claims 7-9) lack the same or corresponding technical features under PCT Rule 13.1. This is incorrect because each of the species includes the same or corresponding technical features of the (+)-R-N-[2-hydroxy-3-(1-piperidinyl)-propoxy]-pyridine-1-oxide-3-carboximidoyl chloride chemical structure for the treatment of a neurodegenerative disease. As further proof, the elected species fall within all the pending claims, so the sharing of a same or corresponding technical feature among these claims is necessary.

Second, the Office asserts that there is "an examination and search burden." However, unity of invention practice according to the PCT is the standard for the present application under 35 U.S.C. § 371, and this standard has no provision for a finding of a lack of unity based on any sort of "burden" (See PCT Rule 13 and 40, 37 CFR 1.475, and MPEP 1850). Hence, the Office's use of a non-PCT standard in its unity of invention determination is wholly improper and without legal basis. Furthermore, even assuming a hypothetical burden standard *arguendo*, this argument fails because a simple search of (+)-R-N-[2-hydroxy-3-(1-piperidinyl)-propoxy]-pyridine-1-oxide-3-carboximidoyl chloride would satisfy searching for all the species. Contrary to the Office's unsupported position, different "fields of search" would not be necessary (the Office has not provided any evidence, "e.g., searching different classes/subclasses..."), and there is no reason to expect (and the Office has not advanced any evidence to the contrary) that different "non-prior art issues" would arise for one species and not for another.

For the above reasons, Applicants assert that the species election is improper and request search and examination of the full scope of claims 6-11.


Reply dated October 24, 2008
In Reply to Restriction Requirement of September 24, 2008

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Applicants believe no fee is due with this response. However, if an additional fee is due, please charge our Deposit Account No. 06-1075, under Order No. 004049-0018-101 from which the undersigned is authorized to draw.

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Respectfully submitted,

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